

First Appeal No 1068 of 78

Date of decision: 23/01/96

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT 1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BHATT UMIYASHANIER AMBALAL NI CO. vs KANTILAL & BROTHERS

Appearance: MR HD KARNIK for Petitioner MR KK SHAH for Respondent No. 1

Coram : MR.JUSTICE Y.B.BHATT

ORAL JUDGEMENT

1. The appellant herein is the original plaintiff and the respondent is the original defendant.

2. The plaintiff had filed Civil Suit No.1025/75 in the City Civil Court at Ahmedabad against the defendant for recovering a sum of Rs.5675.39 being the amount due and recoverable from the defendant on account of goods sold and delivered.

3. The plaintiff firm averred that it was doing wholesale business in coal and it was registered under the Partnership Act. The plaintiff had business dealings with the defendant and was accordingly maintaining an account in its books of accounts. The plaintiff

specifically averred in the plaint that in the Samvat year 2030 the defendant had purchased coal worth Rs.17035.30 from the plaintiff and towards this purchase price the defendant had paid the plaintiff a sum of Rs.11601/-. The plaintiff, therefore, claimed the outstanding balance of Rs.5434.39. The plaintiff further averred that the plaintiff used to issue bills to the defendant in respect of the coal purchased from time to time, that as per business custom, interest at the rate of 12% is payable by the defendant on the value of the goods remaining unpaid and accordingly the plaintiff had served the defendant with a notice dated 20th February 1975. Since the amount claimed was not paid, the plaintiff had filed the suit.

4. The defendant had filed an application for leave to defend at Exh.10. By a further pursis filed at Exh.13 the said application has been treated as a written statement in the suit. The defendant contested all the material allegations made in the plaint. What requires to be noted is that he specifically denied that in the Samvat year 2030 he had purchased coal worth Rs.17035.39 as alleged by the plaintiff.

5. The trial court framed issues at Exh.16 and after recording evidence in the matter and on hearing the parties recorded the following findings as under:

5.1 The trial court found that the plaintiff firm is registered under the Indian Partnership Act and that the person suing is shown as a partner in the Register of Firms. The trial court also found that the plaintiff has proved that the defendant used to purchase coal from it. However, the trial court found that the plaintiff has failed to prove the suit claim of Rs.5434.39. The trial court, therefore, found that there is no question of awarding interest or notice charges to the plaintiff.

6. The present appeal raises a short question as to whether the plaintiff has succeeded in showing that the defendant is liable to pay a sum of Rs.5434.39 to the plaintiff as being the unpaid balance for goods sold and delivered during the Samvat year 2030.

6.1 In this context it is necessary to first focus one's attention on what is the case of the plaintiff. It is to be noted that the plaintiff has averred in the plaint that the defendant purchased coal worth Rs.17035/in the Samvat year 2030. In this context it is also important to note that the plaintiff's case as made out in the deposition of its partner Umiyashanker (Ex.22)

is also in identical terms. In para 2 of the examination-in-chief, the said Umiyashanker specifically states that "In Samvat year 2030 the defendant purchased from the plaintiff coal worth Rs.17035.39. He has paid to us Rs.11601/ the value of the goods purchased by him." From this it becomes clear that the specific case pleaded and also sought to be made out is that the defendant had purchased goods worth Rs.17035/in the Samvat year 2030.

6.2 In this context it is required to be seen as to whether these averments have been made out by appropriate evidence on record. The said Umiyashanker has, during the course of his deposition, proved the carbon copies of the bills of the plaintiff firm submitted to the defendant, and these carbon copies are collectively at Exh.23. In his deposition Umiyashanker has given the details of coal purchased by the defendant from the plaintiff firm, by referring to each bill with reference to the date of that particular bill and the value of the goods sold under the said bill.

6.3 It is also pertinent to note that the said Umiyashanker has admitted in his cross-examination (Para 9) as under:

"Defendant Kantilal has not purchased any other goods from us except the goods covered by carbon copies of the bills which have been produced by me at Exh.23 collectively".

It, therefore, becomes abundantly clear that the case pleaded and sought to be proved by the plaintiff is specific at least on two facts viz. (1) that goods worth Rs.17035/were sold to the defendant and (2) that these goods were sold in the Samvat year 2030.

6.4 As regards this specific case sought to be made out by the plaintiff, the defendant had made a very short and telling point, which has been accepted by the trial court. Assuming that the oral evidence of Umiyashanker is required to be accepted in toto, the documentary evidence at Exh.23 clearly indicates that the goods sold and delivered to the defendant would total only Rs.9569.28 and not Rs.17035/ claimed by the plaintiff. It is the plaintiff's own case as set out in the plaint as also in his examination-in-chief (Exh.22) that as against the purchases made in this year, the defendant has paid the plaintiff a sum of Rs.11601/-. Thus, the defendant has overpaid the plaintiff. In any case, on this basis the plaintiff would not be entitled to any decree against the defendant.

6.5 The trial court has accepted this contention inasmuch as the facts and figures as have been set out hereinabove, and which are obviously apparent on the evidence on record, cannot be disputed. When the value of the coal said to have been purchased by the defendant from the plaintiff on different dates, as narrated by Umiyashanker in his deposition and supported by carbon copies of the bills, is added together, this total comes to Rs.9569.28. Obviously and admittedly when the defendant has already paid the plaintiff Rs.11061, the plaintiff would not be entitled to any decree for the amount claimed as the outstanding balance of the value of the goods sold and delivered. Obviously, therefore, the question of interest on such outstanding balance also cannot arise.

7. Having examined the evidence on record I find that it is not possible to draw any exception from the finding recorded by the trial court. The averments made in the plaint and the assertions made by Umiyashanker are unexceptionable and are not capable of any other interpretation. The decree of the trial court is, therefore, required to be sustained.

8. An attempt has been made on behalf of the plaintiff to contend that in the books of accounts of the plaintiff firm, the defendant had an account, and that at the beginning of the Samvat year 2030 there was an outstanding debit balance of Rs.6466.11p. This outstanding balance was in respect of the purchases made in the earlier years, and this outstanding debit balance has been ignored by the trial court.

8.1 No doubt as a general proposition such a contention may appear to have some substance. However, the same does not stand scrutiny for the simple reason that this is not in consonance with the case of the plaintiff as averred in the plaint and as averred in the deposition of Umiyashanker.

8.2 The relevant averment is found in para 1 of the plaint. The said averment is capable of only one meaning i.e. that according to the plaintiff, the defendant had purchased goods worth Rs.17035.39 in the Samvat year 2030, and as against this had made payment of Rs.11601/-. Giving credit for the amount paid by the defendant, the plaintiff still claims a sum of Rs.5434.39 from the defendant.

8.3 It may also be noted that even in his deposition

at Exh.22 Umiyashanker has confined his assertion to the purchases made by the defendant in the Samvat year 2030.

8.4 Thus, it is found that neither in the plaint nor in the deposition of Umiyashanker there is any assertion whatsoever that there was any debit balance of the defendant in the accounts of the plaintiff firm at the commencement of Samvat year 2030. Obviously such an assumption cannot be made merely because an oral contention is sought to be raised in this regard.

8.5. Another aspect which must also be noted is that the account books of the plaintiff firm, or even the relevant extract of the defendant's account in the books of accounts of the plaintiff firm, have not been proved on the record of the case. In the absence of such evidence such a contention cannot be entertained. Even assuming for the sake of argument that there was an outstanding debit balance at the commencement of Samvat Year 2030, unless the validity and accuracy of this figure was both asserted and proved on the record of the case by leading appropriate evidence, the same cannot be said to be a legitimate claim proved against the defendant. Thus the contention that the outstanding debit balance at the commencement of Samvat year 2030 should be taken into account, is not a contention which can be accepted or even considered.

9. In the premises aforesaid, the decree passed by the trial court is eminently sustainable and is accordingly hereby confirmed.

10. This appeal, therefore, fails and is accordingly dismissed with no order as to costs.
